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Secured Lenders constitute the largest creditor claims against MobileMedia in the bankruptcy proceedings. Based on the Secured Lenders' demonstration of a significant financial stake in this proceeding, the Commission has granted them intervenor status in this case.<sup>2/</sup>

Secured Lenders strongly support a grant of the Application. In this proceeding, the Commission has indicated that the test for *Second Thursday* relief will be met where MobileMedia has made a showing that "individuals charged with misconduct will have no part in . . . proposed operations and will either derive no benefit from . . . the [assignment or transfer] application or will receive only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors."<sup>3/</sup> That test is clearly met here.

As detailed in the Application, the four alleged wrongdoers in this proceeding "will have no part in the . . . operations [of the future licensee]."<sup>4/</sup> MobileMedia and Arch have demonstrated that none of the suspected wrongdoers is employed by either company, and that none will play any role in a combined entity. See Joint Petition to Terminate and for Special Relief at 28. Likewise, since all equity interests in MobileMedia will be canceled under the Amended Plan, no distribution will be made to any wrongdoer as a result of this transaction. See *id.* at 29.

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<sup>2/</sup> *MobileMedia Corp., et al.*, 12 FCC Rcd 11861 (1997).

<sup>3/</sup> *MobileMedia Corp., et al.*, 12 FCC Rcd 7927, 7928 (1997) ("*Stay Order*") (citing *Second Thursday Corp.*, 22 FCC 2d 515, 516, *recon. granted in part*, 25 FCC 2d 112 (1970) ); see also *MobileMedia Corp., et al.*, 13 FCC Rcd 14770 (1998); *MobileMedia Corp., et al.*, 13 FCC Rcd 10634 (1998); *MobileMedia Corp., et al.*, 12 FCC Rcd 11861 (1997).

<sup>4/</sup> *Second Thursday*, 22 FCC 2d at 516.

Earlier in this proceeding, the Commission emphasized “[the] danger of severe harm to a multitude of innocent creditors here.”<sup>2/</sup> At the same time, the Commission specifically recognized the protection of innocent creditors as a core public interest consideration underlying *Second Thursday*.<sup>3/</sup> Here, it is clear that approval of the proposed transaction will advance the interests of innocent creditors, including the substantial financial stake held by these Secured Lenders. As detailed in the Application, the proposed transaction will preserve the economic value of more than \$1.1 billion currently owed by MobileMedia to innocent parties. See Joint Petition at 2. It will enable the Secured Lenders to receive 100% of the principal amount of the secured bank debt (\$649 million) in cash, comprising a \$479 million payment by Arch and \$170 million in proceeds already distributed by MobileMedia from the sale of its tower site assets on September 3, 1998. See Attachment A to Supplement to Petition to Terminate and for Special Relief at 1. Unsecured creditors of MobileMedia, whose claims aggregate approximately \$480 million, will collectively receive rights entitling them (or their assignees) to acquire a majority equity position in the post-merger entity. *Id.* Accordingly, the proposed transaction will safeguard the interests of innocent creditors in accordance with the principles of *Second Thursday*.


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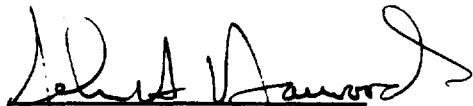
<sup>2/</sup> *Stay Order*, 12 FCC Rcd at 7931.

<sup>3/</sup> *Id.* In applying the *Second Thursday* doctrine, the Commission is obliged to give substantial deference to the objectives of the bankruptcy code and in particular to the protection of innocent creditors such as the Secured Lenders. See *LaRose v. FCC*, 494 F.2d at 1145, 1147-48 (D.C. Cir. 1974). In *LaRose*, the D.C. Circuit required the Commission to “accommodate the policies of federal bankruptcy law with those of the Communications Act.” *Id.* at 1146, n.2.

For the foregoing reasons, the Secured Lenders urge the Commission promptly to terminate the MobileMedia hearing and grant the Application in order to expedite MobileMedia's emergence from bankruptcy and prevent any further deterioration of MobileMedia's business to the detriment of innocent creditors.

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November 16, 1998

## **CERTIFICATE OF SERVICE**

I, Michael A. McKenzie, hereby certify that on this 16th day of November 1998, I caused copies of the foregoing "Comments Of Secured Lenders In Support Of Applications For Transfer Of Control And Petition To Terminate And For Special Relief" to be served by hand delivery, unless otherwise indicated, on the following:

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